

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**Company Appeal (AT) (Insolvency) No. 316 and 317 of 2018**

[arising out of Order dated 8th June 2018 by NCLT, Principal Bench, New Delhi in C.P. No. (IB)-75(PB)/2018]

IN THE MATTER OF :**SREI Infrastructure Finance Ltd.****Appellant****Vs.****Canara Bank & Ors.****Respondents****Present:****For Appellant :****Mr. Sudipto Sarkar, Senior Advocate with Mr. Abhijeet Sinha, Mr. Arijit Majumdar, Mr. Shambo Nandy and Mr. Saikat Sarkar, Advocates****For Respondents:****Mr. Alok Dhir, Ms. Varsha Babnerjee, Mr. Tarun Mehta and Mr. Kunal Godhwani, Advocates for Respondents****J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

The Appellant SREI Infrastructure Finance Limited (Financial Creditor) filed an application under Section 60(5) of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "I & B Code") for direction to Resolution Professional of Deccan Chronical Holdings Limited ('Corporate Debtor') [in C.P (IB) No. 41/7/HDB/2017] to allow the Appellant as a member of the Committee of Creditors and to participate and vote in the said meeting.

2. The Resolution Professional refused to allow the appellant as member of the Committee of Creditors on the ground that the appellant is “related party” in relation to the Corporate Debtor. The aforesaid decision has been upheld by the Adjudicating Authority (National Company Law Tribunal) Hyderabad Bench, Hyderabad by impugned order dated 15th November 2017. The prayer for interim stay was also rejected by the Adjudicating Authority on the same day.

3. Before the Adjudicating Authority the case of the appellant was that it disbursed a sum of Rs. 240 Crores (Rs. Two Hundred Forty Crore) to the Corporate Debtor against the grant for time value of money. The money was borrowed by the Corporate Debtor against payment of interest. It was Corporate Debtor who converted and allotted 6,60,37,735 equity shares of Rs. 2/- each at a premium of Rs. 1.18 per share. Thereby a sum of Rs. 20 Crores (Rs. Twenty Crores) was converted out of the Rs. 240 Crores/- investment, which actually constitute part of the investment. Therefore, the Appellant cannot be treated to be a shareholder common for all purpose in strict sense.

4. The case of the Resolution Professional is that the appellant is a shareholder having more than 20% share with related party. In his affidavit the Resolution Professional has taken following plea:-

“7. That as per the records of the Corporate Debtor, a meeting of Preferential Issue Committee was held on 8th September, 2014. In the said meeting, 6,60,37,735 equity shares of the Corporate Debtor were issued and allotted to SREI Infrastructure Limited (Appellant) for an

amount of Rs. 3.18 per equity share. A copy of extract of resolution passed in the meeting of Preferential Issue Committee held on 8th September 2014 is annexed herewith and marked as **'Annexure-A4'**.

8. That as per records of Corporate Debtor and also available on MCA Portal, e-form PAS-3 (i.e. Return of allotment) was filed with the Registrar of Companies following are the details of said the allotment:

<i>Date of allotment</i>	08/09/2014
<i>Number of securities allotted</i>	66,037,735
<i>Nominal amount per security (in Rs.)</i>	2.00
<i>Total nominal amount (in Rs.)</i>	132,075,470.00
<i>Amount to be treated as paid up (in Rs.)</i>	2.00
<i>Premium amount per security (if any) (in Rs.)</i>	1.18
<i>Total premium amount (if any) (In Rs.)</i>	77,924,527.00
<i>Consideration for which such securities have been allotted</i>	Conversion of Loans
<i>Value (In Rs.)</i>	209,999,997

That as per the said e-form PAS-3 following is the Capital structure of the company (Corporate Debtor) after taking into consideration the above allotment(s) of the shares:

<i>Particulars</i>	<i>Authorized Capital</i>	<i>Issued capital</i>	<i>Subscribed capital</i>	<i>Paid-up capital</i>
<i>Number of equity shares</i>	35,00,00,000	27,50,09,954	27,50,09,054	27,50,09,954
<i>Nominal value per equity share</i>	2	2	2	2
<i>Total amount of equity share</i>	700,000,000	550,019,908	550,019,908	550,019,908

*A copy of e-form PAS-3 (along with the attachments, as filed with the Registrar of companies), a copy of the order of Hon'ble Debt Recovery Tribunal-1 (Kolkata) [‘Hon'ble DRT-1’] dated 24/12/2014 and copy of share certificate in the name of Appellant, as available in the records of Corporate Debtor are annexed herewith and marked as **‘Annexure-A5 COLLY’**.*

9. *That as per the website of Bombay Stock Exchange (‘BSE’), a disclosure under Regulation 29(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 was filed by the Appellant to BSE. A copy of disclosure under Regulation 29(1) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 filed by Appellant to Bombay Stock Exchange is annexed herewith and marked as **‘Annexure-A6’**.*

10. *That as per the records of the Corporate Debtor, it has sent letters dated 12th January, 2015 to NSE and BSE intimating about the preferential issue of 6,60,37,735 equity shares of Rs. 2 each at a premium of Rs. 1.18 per share to SREI Infrastructure Finance Limited(Appellant) and it was referred in the said letter that pursuant to orders of Hon'ble DRT-1 dated 24th December 2014, pursuant to Board Meeting date 16th January 2014 and meeting of preferential issue committee dated 8th September 2014, DCHL has issued and allotted 6,60,37,735 equity shares of Rs. 2 each at a premium of Rs. 1.18 per share to SREI Infrastructure Finance Limited. Also, it was stated in the intimation letter that the allotment is subject to the provisions of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2009, Listing Agreement signed with the Bombay Stock Exchange, National Stock Exchange of India Limited, guidelines issued by Reserve Bank of India and other applicable laws."*

5. Section 5(24) defines related party in relation to a Corporate Debtor, which reads as follows: -

“24. *“related party”, in relation to a corporate debtor, means—*

(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;

(b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

(c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;

(d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;

(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;

(i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;

(j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;

(k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;

(l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;

(m) any person who is associated with the corporate debtor on account of—

(i) participation in policy making processes of the corporate debtor; or

(ii) having more than two directors in common between the corporate debtor and such person; or

(iii) interchange of managerial personnel between the corporate debtor and such person; or

(iv) provision of essential technical information to, or from, the corporate debtor;”

6. Therefore, it is held that the appellant controls more than twenty per cent of the voting rights in the Corporate Debtor on account of ownership or a voting agreement, the appellant to be treated as a related party in relation to a Corporate Debtor and thereby cannot be made member of the Committee of Creditors, even if the appellant is also a ‘financial creditor’.

7. Learned counsel appearing on behalf of the appellant referred to this plea taken by Resolution Professional and the enclosures attached which is affidavit including the Balance Sheet of the “Deccan Chronicle Holdings Limited” as at 18th July 2017 (Annexure A-14) and as at 31st March 2016 (at page 165 and 166), both which reads as follows:-

DECCAN CHRONICLE HOLDINGS LIMITED
BALANCE SHEET AS AT 31st MARCH 2016

Amount in Rs.

Particulars	Note No.	As at 31.03.2016		As at 31.03.2015	
I. EQUITY AND LIABILITIES					
(1) Shareholders' Funds					
(a) Share capital	3	417,944,438		417,944,438	
(b) Reserves and surplus	4	(873,964,825)		(748,181,936)	
			(456,020,387)		(330,237,498)
(2) Non-current liabilities					
(a) Long-term borrowings	5	-		-	
(b) Other Long term liabilities	6	70,457,075		71,819,814	
(c) Long-Term provisions	7	138,117,054		137,516,135	
			208,574,129		209,335,949
(3) Current liabilities					
(a) Short-term borrowings	8	37,504,377,905		37,534,582,905	
(b) Trade payables	9	808,933,907		792,142,308	
(c) Other current liabilities	10	2,501,059,623		2,494,138,343	
			40,814,371,435		40,820,863,556
Total			40,566,925,177		40,699,962,007
II. ASSETS					
(1) Non-current assets					
(a) Fixed assets					
(i) Tangible assets	11(a)	6,293,357,287		6,689,876,244	
(ii) Intangible assets	11(b)	-		4,543,343	
(iii) Capital work-in-progress	11(c)	1,923,228,278		1,913,790,442	
(iv) Intangible Assets under Development (Refer Note No. 24.3 & 24.E)		29,053,188,397		29,053,188,397	
(b) Long term loans and advances	12	244,604,614		186,962,749	
			37,514,438,576		37,850,361,175
(2) Current assets					
(a) Inventories	13	105,784,495		108,826,000	
(b) Trade receivables	14	1,817,471,665		1,660,617,956	
(c) Cash and cash equivalents	15	132,288,213		138,436,887	
(d) Short term loans and advances	16	473,533,190		450,108,142	
(e) Other Current Assets	17	523,409,038		491,611,847	
			3,052,486,601		2,849,600,832
Total			40,566,925,177		40,699,962,007
Significant Accounting Policies	2				
Other Notes forming part of the Financial Statements	24				

As per our Audit Report U/S 44AB of the Income Tax Act
For C.B.Mouli & Associates
Chartered Accountants

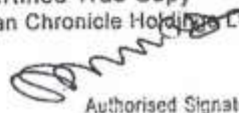
For and on behalf of the Company

Sd/-
Mani Oommen
Partner

Sd/-
T. Vinayak Ravi Reddy
Vice-Chairman & Managing Director

Place Secunderabad
Date: 12th October 2016

Certified True Copy
For Deccan Chronicle Holdings Ltd.


Authorised Signatory

3. Share Capital

Particulars	As at 31st March 2016		As at 31st March 2015	
	Number of shares	Amount Rs.	Number of shares	Amount Rs.
(a) Authorized Share Capital Equity shares of Rs.2/- each	350,000,000	700,000,000	350,000,000	700,000,000
(b) Issued Share Capital (Refer Note No.3.d) Equity shares of Rs.2/- each	208,972,219	417,944,438	208,972,219	417,944,438
(c) Subscribed and fully paid up Share Capital (Refer Note No.3.d) Equity shares of Rs.2/- each	208,972,219	417,944,438	208,972,219	417,944,438
Total	208,972,219	417,944,438	208,972,219	417,944,438

3 (a) Reconciliation of the number of shares and amount outstanding at the beginning and at the end of the reporting year:

Particulars	As at 31st March 2016		As at 31st March 2015	
	Number of shares	Amount Rs.	Number of shares	Amount Rs.
Equity shares of Rs.2/- each with voting rights At the beginning of the year	208,972,219	417,944,438	208,972,219	417,944,438
Add: Shares issued during the year (Refer Note No.3.d)	-	-	-	-
Outstanding at the end of the year	208,972,219	417,944,438	208,972,219	417,944,438

3 (b) Details of shares held by the holding company, the ultimate holding company, their subsidiaries and associates: Nil

3 (c) Details of shares held by each shareholder holding more than 5% shares: (Refer below Note)

The information regarding each shareholder holding more than 5% as on 31.03.2016 is not available.

3.d. As part of conversion of debt into equity, 6,60,37,735 Nos equity shares were allotted during the year for which necessary forms have been also filed with the Registrar of Companies (ROC). However, allotment of equity shares was not recognised / accounted in the books of accounts since the allotment of shares was not approved by the stock exchanges by stating that the allotment was not as per the guidelines prescribed by the stock exchanges.

DECCAN CHRONICLE HOLDINGS LIMITED
BALANCE SHEET AS AT 31st MARCH 2017

Amount in Rs.

Particulars	Note No.	As at 31.03.2017		As at 31.03.2016	
I. EQUITY AND LIABILITIES					
(1) Shareholders' Funds	3	417,944,438		417,944,438	
(a) Share capital	4	(1,349,032,076)		(873,964,829)	
(b) Reserves and surplus			(931,087,639)		(456,020,387)
(2) Non-current liabilities					
(a) Other Long term liabilities	5	68,872,608		70,457,675	
(b) Long-Term provisions	6	137,312,717	206,185,325	138,117,054	208,594,129
(3) Current liabilities					
(a) Short-term borrowings	7	39,677,726,996		39,771,426,996	
(b) Trade payables	8	847,808,973		808,933,907	
(c) Other current liabilities	9	407,785,624		234,010,532	
			40,933,321,993		40,814,371,435
Total:			40,208,419,280		40,566,925,177
II. ASSETS					
(1) Non-current assets					
(a) Fixed assets	10(a)	6,033,135,016		6,293,357,287	
(i) Tangible assets	10(b)	1,927,171,620		1,923,228,278	
(ii) Capital work-in-progress	10(c)	29,053,188,397		29,053,188,397	
(iv) Intangible Assets under Development (Refer Note No. 23.4)					
(v) Long term loans and advances	11	198,167,591	37,211,662,824	244,664,614	37,514,438,576
(2) Current assets					
(a) Inventories	12	40,431,626		105,784,495	
(b) Trade receivables	13	1,836,293,072		1,817,471,665	
(c) Cash and cash equivalents	14	94,582,570		132,288,213	
(d) Short term loans and advances	15	494,538,661		473,533,190	
(e) Other Current Assets	16	530,950,527	2,996,756,456	523,409,038	3,052,486,601
Total			40,208,419,280		40,566,925,177
Significant Accounting Policies	2				
Other Notes forming part of the Financial Statements	23				

As per our Audit Report U/S 44AB of the Income Tax Act
 For C.B.Mouli & Associates
 Chartered Accountants

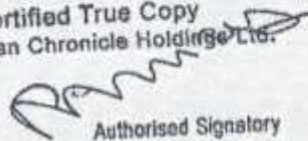
For and on behalf of the Company

Mani Ommen
 Partner

P.S.V. Krishnappa
 Dy. Chief Executive Officer

Place: Secunderabad
 Date: 30th October 2017

Certified True Copy
 For Deccan Chronicle Holdings Ltd.


 Authorised Signatory

3. Share Capital Particulars	As at 31st March 2017		As at 31st March 2016	
	Number of shares	Amount Rs.	Number of shares	Amount Rs.
(a) Authorized Share Capital Equity shares of Rs.2/- each	350,000,000	700,000,000	350,000,000	700,000,000
(b) Issued Share Capital (Refer Note No.3.d) Equity shares of Rs.2/- each	208,972,219	417,944,438	208,972,219	417,944,438
(c) Subscribed and fully paid up Share Capital Equity shares of Rs.2/- each	208,972,219	417,944,438	208,972,219	417,944,438
Total	208,972,219	417,944,438	208,972,219	417,944,438

3 (a) Reconciliation of the number of shares and amount outstanding at the beginning and at the end of the reporting year:

Particulars	As at 31st March 2017		As at 31st March 2016	
	Number of shares	Amount Rs.	Number of shares	Amount Rs.
Equity shares of Rs.2/- each with voting rights At the beginning of the year	208,972,219	417,944,438	208,972,219	417,944,438
Add: Shares issued during the year (Refer Note No.3.d)	-	-	-	-
Outstanding at the end of the year	208,972,219	417,944,438	208,972,219	417,944,438

3 (b) Details of shares held by the holding company, the ultimate holding company, their subsidiaries and associates: Nil

3 (c) Details of shares held by each shareholder holding more than 5% shares: (Refer below Note)
The information regarding each shareholder holding more than 5% as on 31.03.2017 is not available.

3.d. As part of conversion of debt into equity, 6,60,37,735 Nos equity shares were allotted to one of the lender during the year 2014-15 for which necessary forms have been also filed with the Registrar of Companies (ROC). However, allotment of equity shares has not been recognised / accounted in the books of accounts pending clarifications.

8. From the note below the Balance Sheet as on 31st March 2016, para 3(d) which is clear as part of conversion of debt into equity, 6,60,37,735 Nos. of equity shares were allotted during which necessary forms have been also filed with the Registrar of Companies. However, allotment of equity shares was not recognized/accounted in the books of accounts since the allotment of shares was not approved by the stock exchange by stating that allotment was not as per guidelines prescribed by the stock exchange. Such note has been reiterated in the Balance Sheet as on 31st March 2017 and the Balance Sheet as on 18th July 2017.

9. The Balance Sheet has been produced by the Resolution Professional but we find that he has failed to notice the note below the Balance Sheet which was not recognised as allotment of equity shares in favour of the appellant.

10. Neither the Resolution Professional or the Committee of Creditors nor the Adjudicating Authority can go beyond record of the Corporate Debtor including the Balance Sheet as on 18th July 2017.

11. The appellant has disbursed the amount of Rs. 240 Crores in favour of Corporate Debtor in consideration of time value of money as the Corporate Debtor borrowed the loan amount for its business is not in dispute. Thereby, status of the appellant as a 'financial creditor' has not been disputed. But mainly on the ground that he is a 'related party' as defined under Section 24, he has not been allowed to be member of the Committee of Creditors.

12. The findings of Resolution Professional and the Adjudicating Authority being not based on the records of the Corporate Debtor and as it has been found that even after the date of triggering of Corporate Insolvency Resolution Process, the amount of Rs. 20 Crores out of Rs. 240/- Crores investment has not been legally approved as equity share nor recognised by the competent authority that is the Registrar of Companies and the stock exchange, we hold that the appellant cannot be treated to be a 'related party' in relation to Corporate Debtor as defined under Section 24.

13. The Adjudicating Authority has failed to take into consideration the aforesaid facts and wrongly held that the appellant is a 'related party' in relation to the Corporate Debtor, we set aside the impugned order dated 16th November 2017.

14. The Resolution Professional, the members of the 'Committee of Creditors' and the Adjudicating Authority are directed to treat the appellant as one of the member of the 'Committee of Creditors'. We further direct to call for a meeting of the 'Committee of Creditors' after intimating the appellant and to consider the Resolution Plan in accordance with Section 30(4). The Resolution Plan, if earlier approved in absence of appellant – 'financial creditor', being illegal is to be ignored.

15. The appellant will take part in the meeting of the 'Committee of Creditors' but will not raise unnecessarily any objection, if resolution plan already approved by the 'Committee of Creditors'. If such plan is the best out of the rest, viable and feasible, and taken into consideration all factors under Section 30(2) and if the Resolution Applicant is not ineligible under Section 29(A), the appellant will concur with the rest of the members of the 'Committee of Creditors' without raising any objection. However, if there is some better Resolution Plan, the appellant may bring it to the notice of the rest of the 'Committee of Creditors'.

16. For the purpose of counting the total period of 'corporate insolvency resolution process', the period of pendency of the appeal i.e. from 11th December 2017 till the date of this judgement be excluded. Once one or other resolution plan is approved, Resolution Professional will place the same before the Adjudicating Authority for its order under Section 31.

17. The appeals are allowed with the aforesaid observations and directions.

No cost.

(Justice S.J.Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

New Delhi

Dated: 20th July 2018

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